NOTES OF CASES.

Husband and Wife (§ 289)—Separate Maintenance—Equitable Jurisdiction.—A court of equity, independently of proceedings for divorce, on the ground of inadequate remedy at law, may decree maintenance to a wife who has been deserted by her husband.

(Ed. Note.—For other cases, see "Husband and Wife," Cent. Dig. § 1078; Dec. Dig. § 289) Lang *v.* Lang et al. Supreme Court of Appeals of West Virginia, Jan. 23, 1912), 73 S. E. 716. The court says: "In Chapman *v.* Parsons, 66 W. Va. 308, 66 S. E. 461, 24 L. R. A. (N. S.) 1015, 135 Am. St. Rep. 1033, we noticed the question now presented, but reserved answer thereto. Now that it is squarely before us, we must answer the same in the light of reason and authority. We hold that equity has jurisdiction to decree alimony or maintenance to a wife, independently of our divorse statutes. Out of the great contrariety of opinion on the point, we choose that which seems best to accord with reason and justice. Indeed we adopt the view which is now recognized by the current of authority in the United States, whatever may be said in some of the older encyclopedias and text-books. An extended critical examination of the subject convinces us that the courts of this country have so rapidly accepted the view which we now approve that the weight of authority is in its favor, though only a few years ago the writers generally announced that the weight was the other way. * * * But there is direct Virginia authority on the subject. 'In Virginia, not only is alimony granted as incidental to divorce of either kind, with the largest discretion as to the estates of the parties, but it may be granted by the court of chancery, independently of any divorce, or any application for one, as where the misconduct of the husband drives the wife from her home, or he turns her out of doors, or perhaps wherever a divorce from bed and board, or a restoration of conjugal rights would be decreed had they been asked for.' 1 Minor's Inst. (4th Ed.) 308. A Virginia chancellor was perhaps the first to promulgate this doctrine. Purcell *v.* Purcell, 14 Va. 507, Judge Tucker says the decision in that case is sound. Tucker's Com. book 1, ch. 9, page 101. Justice Story cites it and says: 'There is so much good sense and reason in this doctrine, that it might be wished it were generally adopted.' 2 Equity Jurisprudence, supra. The doctrine was again affirmed in Almond *v.* Almond, 25 Va. 662, 15 Am. Dec. 781. It is distinctly recognized in the opinion in Latham *v.* Latham, 71 Va. 307. Judge Johnson seemingly approves it in Stewart *v.* Stewart, 27 W. Va. 167. We have observed that Mr. Minor, in the last edition of his great commentaries, considered it the law of Virginia. Yet, the argument is made that the Purcell and Almond Cases must be distinguished because there were no divorce statutes in Virginia when these cases were instituted. No such

reason is given for the opinion in either of the cases. Plainly in them, equity was accorded jurisdiction on the ground that the wife had no adequate remedy at law to secure—not a divorce—but the maintenance due to her from the husband. These decisions are binding authority in this jurisdiction. We have already indicated that we have no disposition to overthrow them."

Railroads (§ 415)—Operation—Injuries to Animals on Track—Care Required.—It is negligence per se for a railroad company, in the nighttime, to run an engine backwards over its main track without a proper headlight on the tender sufficient to enable the enginemen, in the exercise of reasonable and ordinary care, to see ahead a reasonable distance, so as to avoid doing injury to dumb animals astray upon the track. (Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1476-1482; Dec. Dig. § 415.) Hanger et al. *v.* Chesapeake & O. Ry. Co. (Supreme Court of Appeals of West Virginia Jan. 23, 1912), 73 S. E. 713.*

Counties (§ 108)—Property—Restriction on Power of Alienation.—A deed conveying land to a county court for courthouse purposes, which provides that the judicial proceedings for the county shall be held upon the premises, but which does not expressly provide that the title shall revert in case the land should cease to be so used, does not amount to a restriction upon the right of alienation by the county court. (Ed. Note.—For other cases, see Counties, Dec Dig. § 108.) Brannon and Robinson, JJ., dissenting. Keatley et al. *v.* Summers County Court et al. (Supreme Court of Appeals of West Virginia. May 2, 1911. On rehearing, Feb. 6, 1912), 73 S. E. 706. From the dissenting opinion, we copy the following: "I would not give county courts this important power by mere implication. To do so would militate against public policy. There is a sentiment that should not be lost sight of, in addition to the practical. The courthouse land was acquired to be held for generation after generation. Because so much ground may not be needed just now, those who come after will surely need it. Lots are sold from it. High houses and noisy manufactories are built up against or close to the courthouse, shutting off light and air and producing noise. In the Virginias, as elsewhere, the court green is historic and sacred. Upon it generations gone have met from all parts of the county in social and friendly intercourse. A great place for the communion of the

*The duty of provision which the West Virginia court here declares that railroad companies owe to animals trespassing on their tracks stands out in strong contrast to the rule of the Virginia court, which does not require such care to be exercised even as to human beings. We prefer the West Virginia doctrine.